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RITUAL AND EVIDENCE

LEGAL CONSEQUENCES OF SORCERY

The occurrence of supernatural sanctions may be legally irrelevant, for sin need not be illegal. But sometimes an act may be both sinful and illegal and the invocation of a supernatural sanction is one way of dealing with a grievance. When the sanction depends on invocation by the aggrieved or by an official, we have one form of resort to law—though it be also, or even exclusively, religious law.

There is a notion current among social scientists that religious tabu precedes legal strictures in the hypothetical time sequence of social development. Law emerges from religion, they say. This is one of those over-generalizations which trap seekers of sequences. Because in our own social history and that of Greece and Rome we can note an early precedence of religion as a source of some law, or because in some primitive societies tabu and supernatural injunction dominate human conduct, does not mean that such circumstances are characteristic of human society in general.[1]

Yet this erroneous notion is commonly accepted as self-evident fact. Harry Elmer Barnes' restatement of Franz Oppenheimer's thesis may be noted as an example. "Primitive punishment is inflicted either to remove the stain of impurity from society or to prevent a supernatural being from taking revenge on the tribe."[2] This is partly true of the punishment of murder among the Cheyennes. It would also be true for the punishment of incest among most natives of Australia. It holds only in very minor part for the Comanches. In none of the incest cases will the reader find a trace of fear of the supernatural expressed. Though religion penetrates the legal complex, law in this society does not reinforce religious beliefs.

Like all Indians, the Comanches were essentially religious. Their religion shows affiliations with characteristic forms of the Plains and in some respects with the Shoshonean peoples of the Great Basin.

It was an exceedingly simple, highly vital religion. The concept of the guardian spirit[3] was its heart and core. Success and excellence in any action

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[1] Mr. A. S. Diamond (*Primitive Law*, London, 1936), has recently attempted to demonstrate the lack of validity of the "law from religion" doctrine by an historical examination of the development of the early legal codes of Asia Minor and Europe in particular. The codes, however, are the terminus, not the beginning of primitive law, a fact which makes his argument spurious as far as legal beginnings may be concerned.

[2] H. E. Barnes, *The Story of Punishment* (New York, 1924), p. 3.

[3] For the cultural significance and generalized nature of the complex see Ruth Benedict, *The Concept of the Guardian Spirit in North America* (Memoirs of the American Anthropological Association, No. 29, 1924), p. 29.

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627 "But you listen, I deny this thing. Now look out! I am going to smoke too.
177 If you are putting the lie on me, the sun will get you instead." That put a
562 different complexion on the situation; the husband was not begging for such a bargain. "So," as That's It put it, "he called off his sun-killing and gave his wife sugar-words."

Later another husband called the deal and paid the price. A man named Brother-in-law, according to Holding Her Sunshade, tried his wife on false evidence. When he put her to the curse, she made her denial and ended by calling to the supernaturals, "If he cuts off my nose, grant that he shall not live long." Brother-in-law accepted the challenge. He did cut off her nose, and within a month he was dead.

x 627 ●688 In earlier days when such notions had not yet occurred to women, there were, nevertheless, other escapes, if the aid of a powerful practitioner could be enlisted. For in the case of Looking For Fun, we have one fortunate woman who was able to dodge death through the invocation of strong counterpowers.

Case 30. Adultery, Conditional Curse: Looking For Fun
Informant: That's It

"Her husband suspected her of adultery. This Looking For Fun denied. So her husband made sun-killing. Smoking to the powers, he first addressed the sun saying, 'You, Father, know the truth of this matter. As you look down on them don't let them live till fall.'[9] Then to the earth he said. 'You, Mother Earth, as you know what is true, don't let them live a happy life on you.' Whereupon he gave the pipe to his wife that she might make her self-curse.

Even though she was guilty and knew it, she swore to the powers, 'Sun, if you don't believe me. then let me perish. Mother Earth, if you don't believe me, let it be true that I won't live right upon you! Whatever he says, let it be true!"

"That ended the ceremony.

"After a few months Looking For Fun had fainting spells and began to waste away. She was frightened and went to a medicine man for help. He told her to wait to see what his powers offered. After three or four days he came to her and said he believed that the husband's charge was true! The great powers were punishing her. At this she owned up. She told the medicine man she had not confessed because she was afraid of what her husband would do to her. As for the curse, she said she didn't believe in its power and so had lied about it. The medicine man told her that that being the situation, it was too dangerous a matter for him to handle. His power was not strong enough to cope with the sun. He recommended that she take her case to another medicine man who was a specialist in such matters. Looking For Fun was eager and asked her adviser to tell her mother of the situation. The medicine man

[9] Compare this wording with the Crow Indian conditional curse in coup-counting disputes—"It was I struck the enemy. Sun, as you looked down, you saw me. May the one who lies die before winter." R. H. Lowie, *The Crow Indians* (New York, 1937), p. 217.

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went over to her mother and told her what had happened. It would be a good time to get that other doctor right away, he said, because the woman's husband was on the war path and would not know about it. The mother agreed and they went to see the other doctor.

"This medicine man considered the matter and then said that he could cure her. He told them it was good they came while the trouble was yet in the early stages, for it would be incurable later on. If they wanted the cure done, he told them there were two choices. Either they would have to sacrifice someone else in the family, or else provide eight horses to be killed, for he could not stop the disease; he could only shift it to something else. He said he would prefer horses because he would rather not take the life of a human being. They agreed it should be horses. They went away and the medicine man worked up his power and performed his ritual. Before long the band broke camp and moved. This happened before the husband had returned from the war path. While they were driving the eight horses along, one of them suddenly dropped dead. They left him lying, and before long another one collapsed. Before they got to the next camp-site every one of the eight horses had fallen, one after the other.

"Then the mother and daughter rejoiced, for the doctor told them that if the horses did not die, it was a sign that he could not cure her of the curse which was upon her. Payment, he had said, could be in anything except horses. When the husband returned from the raid they told him how they had broken camp and lost eight horses on the trip, though no one knew how it had happened. That was all the deluded husband ever knew."

Indeed, as Professor Malinowski has so cogently shown for the Trobriand Islanders, "a supernatural sanction need not guard a rule of conduct with automatic effect."[10]

On the other hand, there were other ways in which resourceful husbands who had the proper medicine could lay a sorcery trap to catch an erring wife. How frequently this was done we do not know. From all accounts it was not very necessary, for all Comanches will gravely assure you that medicine men did not have much trouble with their wives. The women were afraid of the powers of such especially endowed spouses and decorously controlled their behavior accordingly. Even so, a case not without its humor was recorded, and is told with great relish by the Indians.

Case 31. Adultery
Informant: That's It

"There was a medicine man who had three wives, sisters to one another. He was suspicious of the actions of his favorite wife, who was the eldest. This man wanted to go to the Smoke Lodge for the evening, but would not trust that wife, so he put an arrow with medicine powers under the bed, and left.

[10] B. Malinowski, *Crime and Custom*, p. 81.